

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOTION OF GTE SOUTH)	
INCORPORATED PURSUANT TO KRS)	
278.512, ET SEQ., FOR)	CASE NO. 97-261
MODIFICATION OF THE FORM OF)	
REGULATION OF CERTAIN)	
TELECOMMUNICATIONS SERVICES)	

O R D E R

On May 20, 1997, GTE South Incorporated ("GTE South") filed with the Commission a motion requesting modification of regulation of certain telecommunications services. GTE South specifically requests modification of regulation pertaining to its intraLATA toll services in Kentucky. As grounds for its motion, GTE South argues, inter alia, that interexchange carriers have a major competitive advantage over it due to existing rules concerning tariff approval time lines, promotional capability, contract capability, and cost study requirements. GTE South contends it is prohibited from responding effectively to pricing incentives offered by competing carriers in the intraLATA market. GTE South had converted all of its Kentucky exchanges to 1+ intraLATA equal access capability by May 15, 1997, five days before it filed its motion.

KRS 278.512 authorizes the Commission to adopt rules and policies adapted to the changing environment of the telecommunications industry. The Commission may exempt, to the extent it deems reasonable, telecommunications services and products from the requirements of KRS Chapter 278. Id. It may also adopt alternative requirements for establishing rates and charges different from those of KRS Chapter

278. Id. Whether the public interest will be served by exemptions from, or modifications to, the regulatory scheme is the key consideration in any inquiry as to whether exemptions or alternative regulatory requirements should be granted. Id.

The evolving telecommunications market is predicated, under both federal and state law, upon the public interest inherent in the growth of competition in markets once served by monopolies. Regulatory restrictions are relaxed upon a showing that the carrier requesting the modification no longer exercises market dominance. For example, the Commission relaxed its regulatory requirements of AT&T Communications of the South Central States, Inc. ("AT&T") when AT&T was able to show that it no longer possessed the power to dominate the long-distance market in Kentucky.¹

GTE South clearly attempts to make the same showing in its petition. However, even viewing the facts presented by GTE South in the light most favorable to its case, the Commission must reject the petition as premature. Although GTE South alleges that meaningful competition exists in its intraLATA toll market, its focus on its position in the intraLATA market alone is far too narrow. The Commission takes administrative notice of the following facts: GTE South's local monopoly in its region remains almost entirely intact; it remains in control of bottleneck facilities; and it is the sole carrier in Kentucky that, in conjunction with an affiliated company, currently provides local, intraLATA long distance and interLATA long distance services. The resulting collective ability to provide one-stop shopping for customers confers upon GTE South a tremendous advantage not

¹ Case No. 92-297, Petition of AT&T Communications of the South Central States, Inc. for Reduced Regulation of Intrastate Telecommunications Services, Order dated July 23, 1993.

shared by any other carrier, and its status as the sole local exchange carrier available to the majority of customers in its region confers upon it immense market power.

GTE South cites a number of figures representing alleged losses in the nation and in other states. It also states its "current line loss" in Kentucky is at 23 percent as of May 2, 1997. However, simple arithmetic indicates that GTE South currently controls the remaining 77 percent of those lines in Kentucky. Such a figure does not indicate that GTE South is unable to compete effectively with other carriers.

GTE South contends that it must go through a thirty day filing procedure pursuant to KRS 278.180, and that the lengthy time frame prevents GTE South from responding competitively to offers from other carriers. However, GTE South seems to have misinterpreted the statute, or at least to have exaggerated the difficulties it imposes. Presumably, GTE South would respond to a competitive offer by another carrier by lowering its own price. KRS 278.180 provides that GTE South may request the Commission to "prescribe a less time" than the standard thirty days to reduce a rate. The Commission will act swiftly in responding to a request to reduce a rate when it is shown that the reduction is meant to respond to a competitive offer.

As a final matter, AT&T opposes GTE South's motion and has filed a motion to intervene in this proceeding. However, because the Commission has found that this case should be dismissed, AT&T's motion should be denied as moot.

IT IS THEREFORE ORDERED that:

1. The motion of GTE South for modification of the form of regulation pertaining to its intraLATA toll service is hereby denied without prejudice.

2. The motion to intervene of AT&T is dismissed as moot.

Done at Frankfort, Kentucky, this 6th day of August, 1997.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

Er J. H. [Signature]
Vice Chairman

B. J. Helton
Commissioner

ATTEST:

Don Mills
Executive Director